

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-08-SE-211
)	
Entone, Inc.)	Acct. No. 201032100028
)	
)	FRN No. 0019824069

ORDER

Adopted: May 14, 2010

Released: May 14, 2010

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Entone, Inc. (“Entone”). The Consent Decree terminates an investigation by the Bureau into whether Entone violated Section 302(b) of the Communications Act of 1934,¹ as amended, (“Act”), and Sections 2.803(a), 2.925, 2.1074, 2.1204, and 15.19 of the Commission’s Rules (“Rules”)² regarding the marketing, labeling, and identification of unauthorized radio frequency devices.

2. The Bureau and Entone have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude there are no substantial or material questions of fact as to whether Entone possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act,³ and Sections 0.111 and 0.311 of the Rules⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that all third-party complaints against Entone before the Bureau related to the above-captioned-investigation as of the date of this Consent Decree **ARE DISMISSED**.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a), 2.925, 2.1074, 2.1204, and 15.19.

³ 47 U. S. C. § 154(i)

⁴ 47 C.F.R. §§ 0.111, 0.311

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to counsel for Entone, Inc., Stefan M. Lopatkiewicz, Esq., Dorsey & Whitney LLP, 1801 K Street N.W., Suite 750, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-08-SE-211
)	
Entone, Inc.)	Acct. No. 201032100028
)	
)	FRN No. 0019824069

CONSENT DECREE

The Enforcement Bureau (“Bureau”) and Entone, Inc. (“Entone”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Entone violated Section 302(b) of the Communications Act of 1934,⁵ as amended, (“Act”), and Sections 2.803(a), 2.925, 2.1074, 2.1204, and 15.19 of the Commission’s Rules (“Rules”)⁶ regarding the marketing, labeling, and identification of unauthorized radio frequency devices.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:

- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §151 *et seq.*
- (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (e) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (f) “Entone” means Entone, Inc., its predecessors-in-interest and corporate successors-in-interest.
- (g) “Investigation” means the investigation commenced by the August 19, 2009 Bureau letter of inquiry regarding possible violations by Entone of Section 302(b) of the Act and Sections 2.803(a), 2.925, 2.1074, 2.1204, and 15.19 of the Rules by marketing unauthorized radio frequency devices within the United States.
- (h) “Parties” means Entone and the Commission.

⁵ 47 U.S.C. § 302a(b).

⁶ 47 C.F.R. §§ 2.803(a), 2.925, 2.1074, 2.1204, and 15.19.

- (i) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act⁷ and Section 2.803(a) of the Rules,⁸ a radio frequency device may not be marketed⁹ within the United States unless the device complies with the applicable technical and administrative provisions of the Rules. Section 15.201(b) of the Rules¹⁰ requires that intentional radiators, not otherwise exempted by the Rules, be authorized by Certification prior to marketing. Pursuant to Section 15.101(a) of the Rules,¹¹ Class B digital devices¹² must be authorized by Verification, and television interface devices¹³ may be authorized either by Certification or by Declaration of Conformity. Radio frequency devices must also comply with all applicable identification and labeling requirements prior to marketing.¹⁴ Under Section 2.1203 of the Rules, no radio frequency device may be imported into the Customs territory of the United States unless the device has been properly declared.¹⁵

3. On August 19, 2009, the Bureau issued a Letter of Inquiry to Entone.¹⁶ The LOI directed Entone to respond to a series of questions regarding the advertising, sale, importation, labeling, and identification of television interface devices and related radio frequency equipment. Entone responded to the LOI on October 5, 2009.¹⁷

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** Entone agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

⁷ 47 U.S.C. § 302a(b).

⁸ 47 C.F.R. § 2.803(a).

⁹ Section 2.803(e)(4) of the Rules defines “marketing” as the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.” 47 C.F.R. § 2.803(e)(4).

¹⁰ 47 C.F.R. § 15.201(b).

¹¹ 47 C.F.R. § 15.101(a).

¹² 47 C.F.R. § 15.3(i).

¹³ 47 C.F.R. § 15.3(y).

¹⁴ See 47 C.F.R. §§ 2.925, 2.954, 2.1074, 15.19(a)-(b).

¹⁵ 47 C.F.R. § 2.1203; see also 47 C.F.R. §§ 2.1204, 2.1205.

¹⁶ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Steve McKay, Chief Executive Officer, Entone, Inc. (August 19, 2009).

¹⁷ See Letter from Stefan M. Lopatkiewicz, Counsel for Entone, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (October 5, 2009).

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Entone agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Entone concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in the Investigation, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Entone with respect to Entone's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Entone agrees to create a Compliance Plan related to future compliance with the Act, the Commission's Rules and the Commission's Orders. The Compliance Plan will include, at a minimum, the following components:

- (a) **Compliance Officer.** Entone will designate a senior corporate officer ("Compliance Officer") who will be responsible for administering the company's Compliance Plan.
- (b) **Training.** Entone will train and provide materials concerning the Commission's equipment authorization rules to all of its employees responsible for the development, marketing and sourcing of radio frequency devices by Entone in the United States, including employees located at its Hong Kong R&D facility.
- (c) **Compliance Reports.** Entone will file compliance reports with the Commission 90 days after the Effective Date, 12 months after the Effective Date, and 24 months after the Effective Date. Each report shall include a compliance certificate from the Compliance Officer stating that the Compliance Officer has personal knowledge that Entone has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the Compliance Officer's compliance certification. All compliance reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Washington, D.C. 20554, with a copy submitted electronically to Kevin Pittman at kevin.pittman@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.
- (d) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire 24 months after the Effective Date.

9. **Voluntary Contribution.** Entone agrees that it will make a voluntary contribution to the United States Treasury in the amount of thirty-five thousand dollars (\$35,000). The payment shall be made within thirty (30) calendar days after the Effective Date. The payment must be made by check or

similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 02130004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Entone will also send electronic notification on the date said payment is made to Kevin M. Pittman at Kevin.Pittman@fcc.gov and JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

10. **Waivers.** Entone waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification or deletion. Entone shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Entone nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Entone shall waive any statutory right to a trial *de novo*. Entone hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

11. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Entone does not expressly consent) that provision will be superseded by such Commission Rule or Order.

13. **Successors and Assigns.** Entone agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission’s Rules and Orders.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

Steve McKay
Chief Executive Officer
Entone, Inc.

Date